MC 3432/2007
BEFORE
HON'BLE MR. JUSTICE B.K. SHARMA

Heard Mr. G.N. Sahewalla, learned Sr. Counsel assisted by Ms. S. Senapati, learned counsel for the applicant/ONGC. I have also heard Mr. P. Bora, learned counsel for the respondent/writ petitioner.

By means of this application, the ONGC has prayed for vacation of the interim order passed on 25.5.2007, by which, while making the notice returnable on 18.6.2007, it was provided that further proceeding in respect of NIT in question would remain suspended. From the very nature of the interim order, it appwears that the same was till the returnable date i.e. 18.6.2007. As has been noted in the order dated 1.10.2007, the said interim order has not been continued beyond 18.6.2007 although the matter was listed thereafter. In the meantime, the ONGC has filed this application seeking vacation of the interim order.

In the aforesaid order dated 1.10.2007, it has been observed that at present there is no stay order operative in the writ petition.

Mr. Bora, learned counsel for the writ petitioner upon reference to the clause 7.14 of the tender document submits that the requirements envisaged in the said clause having not been followed by the some of the joint ventures, their tenders ought to have been rejected. In this connection, learned counsel for the writ petitioner has referred to the cases of the respondents No. 4 and 5.

Mr. Sahewalla, learned Sr. Counsel representing the ONGC submits that the procedure envisaged in the particular tender process has been duly followed. He has also produced the records.

Clause 7.14 (b) provides for joint and several liability for discharging all obligations under the contract. In respect of parties to the joint ventures, it is the case of the writ petitioner that such a clause has been given a good bye. In this connection Mr. Bora, learned counsel for the writ petitioner has refereed to Annexure-5 series MOU. Clause 16 of the said MOU provides that notwithstanding the MOU/agreement the responsibility of completion of job under the contract will be with the Bidder/contractor. According to Mr. Bora, learned counsel for the writ petitioner, such condition is opposed to mandatory requirement as envisaged under Clause 7.14(b).

The MOU, which has been referred to by the learned counsel for the petitioner itself binds the party jointly and severally to the ONGC for execution of successful and satisfactory performance of the contract. Such condition has been incorporated in clause 1. This is in tune with the provisions made in clause 7.14.(b). The conditions relating to responsibility of completion of job by the contractor is altogether different than the joint and several liability of the party.

Mr. Bora, learned counsel for the petitioner upon a reference to clause 7 14 (d) submits that in some of the tender documents, members of the joint venture did not sign the tender document. As per the requirement of the said clause, the bid is required to be signed by all the members of the joint venture. Alternatively the leader with power of attorney may also sign. In this connection, Mr. Sahewalla, learned Sr. Counsel, upon a reference to the records, more particularly the statements and statistics recorded in respect of the tenders, submits that in case of any non-fulfillment of the conditions, same would have been mentioned in the statements/statistics.

In the aforesaid statements/statistics prepared in respect of all the tenders, there is clause relating to requirements of clause 7.14 (d). The statements/statistics have revealed that in case of non-signing of bid or furnishing of consent letter, same has been recorded in the statements holding that the party is not technically qualified.

From the above material, I am prima facie of the opinion that the ONGC adopted correct procedure as envisaged in the tender process. Further there is no stay order beyond 18.6.2007. Be that as it may, since I am of the considered opinion that this is not a fit case for continuation of the interim prayer, I here by vacate the interim order passed on 25.5.2007.

The opinion expressed above, is only tentative and only for consideration of the interim prayer. Same will not have any bearing, in the final disposal of the writ petition. The writ petition shall be heard as expeditiously as possible facilitating to which, the respondents shall file their counter affidavit.

At the time of hearing, the ONGC shall again produce records and further records, if any. Needless to say that, the tenders which are not technically qualified shall not be sent to the stage of financial bid. List immediately after vacation.